

AG Contract No.: KR03-1719TRN
ADOT ECS File No.: JPA 03-129
Project: SR 101L Agua Fria Freeway
Section: 75th-67th Ave.
(Upsizing of Wall Foundations)
TRACS No.: H6517 01C
Budget Source Item No.: 72304
City of Glendale: C-5043

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF GLENDALE

THIS AGREEMENT is entered into 19th May, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The City, by permit from the State, is designing, advertising, constructing and administering a noise wall project adjacent to the State's existing Agua Fria Freeway (SR 101L) between 75th Avenue and 67th Avenue, all at the City's expense. The State desires to provide funds, in a total amount not to exceed of \$272,367.00, as shown on Exhibit "A", attached hereto and made part hereof, all at the State's expense, for the City to include provisions to up-size the wall design and wall foundations, in which to accommodate an additional four feet of wall height to allow for future possible noise mitigation requirements, herein collectively referred to as the "Project". The purpose of this agreement is to define each party's responsibilities for the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26 B30
Filed with the Secretary of State
Date Filed: 05/19/04

Janice K. Brewer
Secretary of State

By: Vinny D. Hoeneveld

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement and receipt and approval of an invoice from the City, remit to the City \$272,367.00, as shown on Exhibit "A", the cost of the Project, which includes a fixed rate of 14% for construction engineering and administration. The total amount of \$272,367.00 shall be considered full and final payment for the Project.

b. Review all contract modifications related to the wall foundation upsizing and provide comments accordingly. The State shall not be responsible for any contract modifications without prior approval.

c. Through its Phoenix District Maintenance Office, grant the City access necessary to accomplish the construction of the Project.

d. Upon completion of the Project, participate in the final inspection and provide concurrence as appropriate.

e. Be responsible for the structural integrity of the Project wall.

f. Be responsible for the control of graffiti and painting on the freeway side of the Project wall.

2. The City will:

a. Upon execution of this agreement, invoice the State \$272,367.00 for the fixed cost of the Project as shown on Exhibit A, which includes a fixed rate of 14% for construction engineering and administration. The fixed cost of \$272,367.00 shall be considered full and final payment for the Project.

b. Inform the State of any contract modifications to the Project and obtain concurrence from the State.

c. Comply with all requirements of the State's permit for the Project. All requests for permits shall be made through the State's Phoenix Maintenance District Office, address provided under III 9.

d. Include the State in final inspection and obtain State's written concurrence upon completion of the Project.

e. Should the City cancel its proposed plans for whatever reason, be responsible for all costs incurred by the State up to the time of cancellation, unless the reason for the City's cancellation is due to the State's failure to comply with its obligations herein

f. Be responsible for the control of graffiti and painting of the Project wall on the frontage road side of the wall/s as constructed and for any future height extension of the wall/s.

III. MISCELLANEOUS PROVISIONS

1. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees, or volunteers.

2. This agreement shall remain in force and effect until completion of the Project and payment; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the advertisement of a construction contract, upon thirty days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007

City of Glendale
City Engineer
5850 West Glendale Avenue
Glendale, AZ 85301


District Office

Arizona Department of Transportation
Phoenix Maintenance District Office
2140 W. Hilton Ave
Phoenix, AZ 85009

10. Pursuant to Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

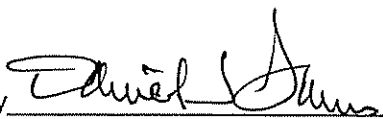
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF GLENDALE

By 
ED BEASLEY
City Manager

STATE OF ARIZONA

Department of Transportation

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

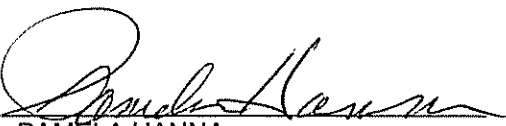
By 
PAMELA HANNA
City Clerk

EXHIBIT A

(JPA 03-129)

Loop 101 Wall Foundations (Up-Sizing) 75th Ave.-67th Ave.

PROJECT COST ESTIMATE

Costs for foundation Up-Sizing

<u>ITEM</u>	<u>ESTIMATED COST</u>
CONSTRUCTION COSTS:	
Additional Steel	\$ 34,218.00
Additional Concrete (960 X \$200)	\$ 192,000.00
Additional Structural Excavation	<u>\$ 12,700.00</u>
Sub-Total	\$ 238,918.00
14% Construction Engineering and Administration	<u>\$ 33,449.00</u>
TOTAL ESTIMATED COSTS	\$ 272,367.00

RESOLUTION NO. 3745 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF
GLENDALE, MARICOPA COUNTY, ARIZONA,
AUTHORIZING AND DIRECTING THE ENTERING INTO OF
AN INTERGOVERNMENTAL AGREEMENT WITH THE
ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE
UPSIZING OF WALL FOUNDATIONS AT LOOP 101/AGUA
FRIA FREEWAY FROM 75TH TO 67TH AVENUES.

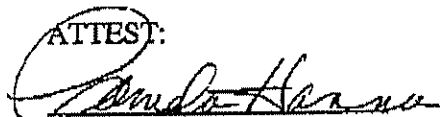
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

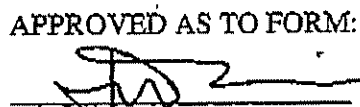
SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (JPA 03-129) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

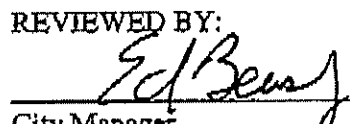
SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 13th day of April, 2004.


MAYOR

ATTEST:

City Clerk (SEAL)

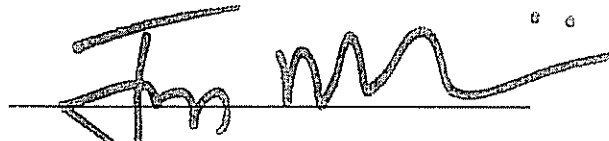
APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

APPROVAL OF THE CITY OF GLENDALE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF GLENDALE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this _____ day of _____, 2004.



City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

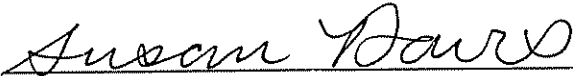
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1719TRN (**JPA 03-129**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 12, 2004

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section